KETUA PENGARAH, PERTUBUHAN KESELAMATAN SOSIAL

v.

RAHIM DARUS

HIGH COURT MALAYA, PULAU PINANG
MOHD NOOR ABDULLAH J
[CIVIL APPEAL NO: 16-1-98]
4 APRIL 2001

ADMINISTRATIVE LAW: *Exercise of judicial functions - Jurisdiction - Social Security Appellate Board - Whether has appellate jurisdiction over appellate medical board - Whether decision made by medical board and appellate medical board final and conclusive - Employees' Social Security Act 1969, ss. 33(2), 34, 91(1)*

LABOUR LAW: *Social security - Invalidity pension - Application for - Whether employee an invalid - Whether to be decided solely by medical board and appellate medical board - Whether Social Security Appellate Board erred in law in deciding upon question of invalidity - Employees' Social Security Act 1969, ss. 33(2), 34, 91(1)*

A medical report prepared by one Dr Tan stated that the respondent was diagnosed with heart failure and that he was unable to continue working as a machine operator. Based on this, the respondent applied for invalidity pension.

The Social Security Organisation ('SOCSO') then referred the respondent to the medical board for an invalidity certificate. Whilst confirming Dr Tan's findings the medical board did not however certify that the respondent was an invalid. The respondent appealed to the appellate medical board but was turned down. Relying on that decision, SOCSO rejected the respondent's claim for invalidity pension.

The respondent then appealed to the Social Security Appellate Board ("SSAB") which then decided that the respondent was entitled to the said pension. This was an appeal by the appellant, the director-general of SOCSO, against the decision of SSAB.

The main issues in this dispute were firstly, whether SSAB had erred in law in handing down its decision, and secondly, whether the medical board and the appellate medical board have the sole jurisdiction under the Employees' Social Security Act 1969 ("the 1969 Act") to decide whether the respondent was an invalid.

Held:

[1] An employee is entitled to invalidity pension only when the medical board (and to the appellate medical board when necessary) concludes that he is an invalid. The medical board shall so certify, if by reason of a morbid condition of a permanent nature, the employee is incapable of engaging in any substantially gainful activity.

[2] The medical board and the appellate medical board have the exclusive right to decide on issues of invalidity or disablement, as they involve medical questions which would best be answered by the medical profession and jurisprudence. SSAB, comprising of legally qualified persons, would not be competent to decide on such issues.

[3] Where an aggrieved party is dissatisfied with a decision of the medical board, s. 33(2) of the 1969 Act confers upon the said party a right to appeal to the appellate medical board. However, s. 91(1) of the 1969 Act provides that SSAB has no appellate jurisdiction over the appellate medical board.

[4] Section 34 of 1969 Act empowers the medical board and the appellate medical board to review their own decisions. This would mean that the decisions of both boards are final, conclusive and not appealable, certainly not to SSAB with exception of the High Court.

[5] SSAB had erred in law in deciding that the respondent was suffering from invalidity as it was entirely within the discretion of the medical board and the appellate medical board to decide whether the respondent was an invalid.

[Appeal allowed; decision of Social Security Appellate Board set aside.]

Legislation referred to:

Employees' Social Security Act 1969, ss. 15, 33(2), 34, 84(3), (4), (5), 90, 91(1), (2)

Employee's State Insurance Act 1948 [India], ss. 54A, 75(2A)

For the appellant - K Maniam; M/s Skrine & Co
Respondent in person

Reported by M Maheswaran

JUDGMENT

Mohd Noor Abdullah J:

This is an appeal arising from the decision of the chairman of the Social Security Appellate Board, hereinafter referred to as "the board" who decided that the respondent, Encik Rahim bin Darus was suffering from an invalidity and was therefore entitled to the benefit of invalidity pension under the Employees' Social Security Act 1969. This appeal is brought by the Director General of the Social Security Organisation, hereinafter referred to as "SOCSO" under s. 91(2) of the Act on an issue which involves a substantial question of law.

In his memorandum of appeal, the appellant raised the following grounds:

(1) Whether the Social Security Appellate Board erred on point of law in deciding that the respondent suffered from invalidity under s. 16(1) of the Act, contrary to the findings of the Medical Board and the Appellate Medical Board;

(2) Whether the respondent is suffering from invalidity or not is a question to be decided by the Medical Board and the Appellate Medical Board and not the Social Security Appellate Board.

Facts Of The Case

The applicant/respondent was employed by Acidchem (M) Sdn Bhd in Seberang Perai, Pulau Pinang as a plant operator earning a salary of RM704.40 per month. He was born in 1944 and was 50 years old at the material date. His job endured the carrying of heavy loads. He had to carry chemical bags weighing about 20kg per bag and chemical containers weighing about 60kg per container through a spiral staircase to the third floor of his factory about 60 feet high and discharged them into a tank. He had been in the employment of the said company for 14 years until he was medically boarded on the recommendation of Dr. Tan Chong Siang, the Medical Superintendent, Bagan Specialist Centre, Seberang Perai. He filed an application for invalidity pension citing the specialist report in support of his application. The specialist report states:

> This is to confirm that the above as a case of Thyrotoxicosis with heart failure. He is unable to continue his employment as a machine operator.

SOCSO then referred the respondent to the medical board for an invalidity certificate. The board confirmed that the respondent was a "patient of CCF and thyrotoxicosis controlled by medication". However, the board did not certify that he was suffering from invalidity.

The respondent then appealed to the appellate medical board, which sat and confirmed the diagnosis of thyrotoxicosis but indicated that this was controlled with medication. The appellate board found further that there was no evident heart failure presently and confirmed that the respondent was not suffering from invalidity.

Based on these findings, SOCSO rejected the respondent's claim for invalidity pension. The respondent was dissatisfied with the decision and he appealed further to the Social Security Appellate Board ("the board") which subsequently made a finding that the respondent was entitled to invalidity pension, contrary to the medical finding of fact by the medical board and the appellate medical board.

The chairman of the board elucidated further facts that the respondent was without a job for one year during which period he did odd jobs as a gardener in his neighbourhood for a meagre income of about RM200 per month. The respondent explained that he still felt weak and unable to perform any work expected of a person of his age. He was still on medication for his ailing heart. Under the circumstances he maintained that he was an invalid and persisted in his claim for invalidity pension.

It was submitted by learned counsel for SOCSO that the issue before the board was whether the respondent was suffering from invalidity or not, and that this issue had been decided by the medical board and the appellate medical board and that the board had no jurisdiction. The respondent appeared before the board. He looked frail and weak. The board summoned a member of the board to appear and furnish additional information and to explain the diagnosis. Dr. Jamaluddin Mohamad, an orthopaedic surgeon and a member of the board testified that thyrotoxicosis is a disease of the thyroid gland which could be controlled by medication. He explained that there was no evident heart failure present at that time due to the medication prescribed to him during the six months preceding his appearance before the board. He confirmed that "a weak heart cannot take the strain of heavy duty particularly to carry 20kg of chemical bags everyday". The board then ruled that the finding of heart failure by the board was qualified one and allowed the appeal. The chairman in his written decision on the issue of jurisdiction stated:

> With due respect we are unable to agree with the submission of Mr. VK Vellu. If we indeed have no jurisdiction to hear the case the Act should set it out in clear terms that the decision of the appellate medical board is final and cannot be called in before this Board. It is indeed strange that SOCSO had not questioned the jurisdiction of this Board to hear such appeals in the numerous matters in the past but elects to raise this question of jurisdiction to hear now.

The displeasure of the learned chairman and board is understandable but in law SOCSO is not estopped from raising the issue of jurisdiction even if SOCSO had submitted to jurisdiction generally numerous times before. Let it be said loud and clear and early in this judgment that **an invalidity or disablement question** is exclusively for the medical board and the appellate medical board to decide. With due respect to the chairman of the board, the plight of and the sympathy for the respondent is not misplaced. The report of the board is incomplete and unsatisfactory. In that report (p. 30 of the appeal record) only item 2 and 8 are filled up namely: "2. the finding of the medical board sitting on 25 January 1994 is confirmed" and "8. Thyrotoxicosis controllable with medication. No evident heart failure presently. Not invalid." It appears that the board considered all the other particulars irrelevant and immaterial. Item 5: whether the insured person is suffering from invalidity is not ticked. Item 9: whether the insured person requires treatment is not ticked either. There was no serious deliberation or effective examination of the respondent's heart condition.

I have scrutinised the appeal record carefully and heard submissions anxiously. In my view the board has no such jurisdiction and I therefore allowed the appeal and set aside the decision of the board. I had given four reasons to support my view at the hearing of the appeal. At the request of the learned counsel for SOCSO and others interested in this decision, I have written this grounds of judgment although there is no appeal against the decision.

1. Invalidity Question, A Medical Answer

The respondent is entitled to invalidity pension if the medical board certify that he is suffering from invalidity. The board shall so certify if by reason of a specific morbid condition of permanent nature, he is incapable of engaging in any substantially gainful activity. The terms "morbid condition of permanent nature" and "incapable of engaging in any substantially gainful activity" is explained in the Act. Section 15 states:

> 15. Subject to provisions of the Act, the insured persons, their dependants or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely:
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> (a) periodical payments to an insured person in case of invalidity certified by a duly appointed medical board or by an authority specified in this behalf by the regulations (hereinafter referred to as invalidity pension);
>
> (b) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible to such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);

16 (1) An insured person shall be considered as suffering from invalidity, if, by reason of a specific morbid condition of permanent nature, he is incapable of engaging in any substantially gainful activity.

(2) For the purpose of subsection (1):

(a) a morbid condition shall be deemed to be of permanent nature if it is either incurable or is not likely to be cured;

(b) a person shall be deemed to be incapable of engaging in substantially gainful activity, if in consequence of the specific morbid condition of sickness or infirmity, he is no longer capable of earning, by work corresponding to his strength and physical ability which, in view of his training and former occupation, might reasonably be assigned to him at the place of his employment or at a similar place in the neighbourhood or in the same district, one-third of the customary earnings of a mentally and physically sound person with similar qualifications and training.

(c) in determining whether the claimant is suffering from invalidity, account shall be taken of any permanent improvement in the state of his invalidity which results or is expected to result from such measures of physical or vocational rehabilitation as may be offered to him free of charge by the Organisation.

The specialist certified that the respondent is a case of thyrotoxicosis with heart failure and that he is unable to continue his employment as a machine operator. It is then for the medical board to certify, after considering the specialist report and after examining the respondent, whether he is suffering from a specific morbid condition of permanent nature and incapable of engaging in any substantially gainful activity. The board found that he was suffering from CCF (congestive cardiac failure) and thyrotoxicosis which could be controlled by medication and certified that the respondent was not suffering from a morbid condition nor require the permanent attendance of another person and that he was not suffering from invalidity.

On appeal to the appellate medical board, the appellate board considered the specialist report, the medical finding of the medical board and the appellate board's own finding that the respondent was suffering from thyrotoxicosis which could be controlled by medication and that there was no evident heart failure presently and concluded that he was not suffering from invalidity. It is noted that the medical board comprised a chairman and one member and the appellate medical board comprised a chairman and two assessors, involving six medical specialists to decide on the medical condition of the respondent. These constitute sufficient safeguard. In my view the invalidity question is a medical question, better if not best answered by the medical profession and

jurisprudence. The Social Security Appellate Board, comprising a legally qualified chairman and two assessors, as representative of the employers and employees is not competent to decide on such medical question.

The Right Of Appeal

The Act confers on an aggrieved party – the insured person or SOCSO – a right to appeal against the decision of the medical board to the appellate medical board. Section 33(2) states:

> 33(2) If the insured person or the Organisation is not satisfied with the decision of the medical board, the insured person or the Organisation may appeal, in the prescribed manner and within the prescribed time, to the appellate medical board constituted in accordance with provisions of the regulations.

The Act does not provide further appeal to the Social Security Appellate Board relating to invalidity pension or permanent disablement benefit. Nor is the board empowered to decide on an invalidity or disablement question. If such questions arise in any proceeding before the board, the board shall direct SOCSO to have the questions decided by the medical board or appellate medical board. The board shall not decide on such questions. Section 84(3) states:

> 84(3) If in any proceedings before the Board an invalidity or disablement question arises and the decision of a medical board or appellate medical board has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Board, the Board shall direct the Organisation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the appellate medical board, as the case may be.

It must be noted that the civil court has no jurisdiction to decide or deal with any question or dispute which is to be decided by the Social Security Appellate Board or the medical board or the appellate medical board except by way of reference on a question of law or by way of appeal on a substantial question of law respectively (ss. 84(4), (5), 90, 91).

These provisions lock out the Social Security Appellate Board from sneaking into the realm of medical jurisdiction and jurisprudence of the medical board and the appellate medical board. Even the court as the custodian of justice and keeper of the master key is allowed limited access. My humble view that the board has no appellate jurisdiction over the appellate medical board is fortified further from the clear intention of the legislature in s. 91(1) of the Act. The section states:

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> 91(1) Save as expressly provided in this section, no appeal shall lie from an order of the appellate **boards** set up by or under this Act.

The word "boards" in the plural number denotes both the appellate medical board and the Social Security Appellate Board. In other words it means and includes that an appeal shall not lie from an order of the appellate medical board to the Social Security Appellate Board.

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Review

The Act empowers both the medical board and the appellate medical board to review its own decision (s. 34). The power to review, in other legislation is conferred to a person or body of superior jurisdiction. In my view the legislature by conferring on the medical board and the appellate medical board the self serving power to review it own decision intends that the decision of both boards are final, conclusive and not appealable, certainly not to the Social Security Appellate Board and with exception to the High Court.

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Other Legislation

I have perused and compared similar legislation in India. Whereas in India s. 75(2A) of the Employee's State Insurance Act 1948, which is in *pari materia* with our s. 84(3) has been amended to empower the Employee's Insurance Court to determine all the issues where an appeal has been filed before it. The section states:

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> 75. (2A) If in any proceedings before the EIC a disablement question arise and the decision of a medical board or medical appeal tribunal has not been obtained, ... the EIC shall direct the Corporation to have the question decided ... and thereafter proceed with the determination of the claim ... in accordance with the decision of the medical board or the appellate medical board, as the case may be, **except where an appeal has been filed before the EIC under subsection (2) of section 54A in which the EIC may itself determine all the issues arising before it.**

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Section 54A of ESIA 1948 provides that an insured person who is not satisfied with the decision of the medical board may appeal to the medical appeal tribunal with a further right of appeal to the Employees' Insurance Court.

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The present position in our country relating to this substantial question of law is that there is no appeal from the decision of the appellate medical board to the Social Security Appellate Board. No amendments have been made to the relevant sections or s. 84(3) of our Act unlike ss. 54A and 75(2A) of the Indian Act.

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The answer to the first substantial question of law is: The Social Security Appellate Board erred in law in deciding that the respondent was suffering from invalidity and the answer to the second question is: the medical board and the appellate medical board decide whether the respondent is suffering from invalidity; the Social Security Appellate Board is not to so decide.

I therefore allowed the appeal of the Director General of SOCSO and set aside the decision of the Social Security Appellate Board.